

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

PRINCE CHARLES COTTEN, SR.,
Petitioner,

vs

Case No. 1:15-cv-385

Black, J.
Bowman, M.J.

CLERK, SIXTH CIRCUIT
COURT OF APPEALS,
Respondent.

ORDER

This matter is before the Court on remand from the Sixth Circuit Court of Appeals for the limited purpose of determining whether petitioner has shown excusable neglect or good cause warranting an extension of time to file a notice of appeal. (*See* Doc. 8).

Petitioner previously filed a petition for a writ of mandamus in this Court against respondent Deborah S. Hunt, the Clerk of Court for the Sixth Circuit Court of Appeals. On August 12, 2015, the Court denied the mandamus petition and dismissed the case with prejudice. (Doc. 5). Petitioner had until October 13, 2015 to file a timely notice of appeal. *See* Fed. R. App. P. 4(a)(1)(B).

On October 29, 2015, petitioner filed a letter claiming that he submitted a timely notice of appeal, but that the letter was not acknowledged by the Court. (Doc. 7). In support of his claim, petitioner included a carbon copy of the alleged notice of appeal, which petitioner claims in a sworn affidavit was mailed on August 27, 2015. (*See id.* at PageID 76–77). The Sixth Circuit has construed petitioner's letter as a timely motion for an extension of time to file a notice of appeal and remanded this matter for the Court to determine whether petitioner has shown excusable neglect or good cause to warrant an extension. (*See* Doc. 8).

The Federal Rules of Appellate Procedure permit a district court to extend the time to file a notice of appeal if “a party so moves no later than 30 days after the time prescribed by . . . Rule 4(a) expires” and “that party shows excusable neglect or good cause.” Fed. R. App. P 4(a)(5)(A)(i)–(ii).

In this case, petitioner’s motion for an extension of time to file a notice of appeal was filed within 30 days after the time prescribed by Rule 4(a) expired. Fed. R. App. P. 4(a)(5)(A)(i). Although a notice of appeal was not received by this Court, petitioner has provided a sworn affidavit stating that he mailed his notice of appeal to the Court on August 27, 2015, prior to the deadline to file a notice of appeal. Based on petitioner’s sworn affidavit, the Court finds that petitioner has demonstrated good cause for an extension of time to file a notice of appeal. Accordingly, construing petitioner’s October 29, 2015 letter as a motion for an extension of time to file a notice of appeal (Doc. 7), the motion is hereby **GRANTED**.

IT IS SO ORDERED.

Date: 1/28/16

Timothy S. Black
Judge Timothy S. Black
United States District Court